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21 LLC, incorrectly sued as Standard & Poor's

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PAUL RICE and JOSEPH RICE,

Plaintiffs,

v.

CHARLES SCHWAB; MOODY'S
INVESTORS SERVICE;
STANDARD & POOR's, DOES 1
through 50, Inclusive,

Defendants.

Case No. SACV 10-00398 CJC (MLGx)

**THE RATING AGENCIES' JOINT
NOTICE OF MOTION AND
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT
PURSUANT TO FED.R.CIV.P.
RULES 12(b)(6) AND 9(b)**

Date: August 9, 2010

Time: 1:30 p.m.

Place: Courtroom 9(B)

Hon. Cormac J. Carney

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on August 9, 2010 at 1:30 p.m., or as soon
3 thereafter as the matter may be heard in Courtroom 9B of the United States District
4 Court for the Central District of California, Southern Division, located at 411 West
5 Fourth Street, Santa Ana, California 92701-4516, Defendants Standard & Poor's
6 Financial Services, LLC ("S&P") and Moody's Investors Service, Inc. ("Moody's"),
7 (collectively, "The Rating Agencies") will and hereby do move, pursuant to Rules
8 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss with prejudice
9 the First Amended Complaint filed by plaintiffs Paul Rice and Joseph Rice (the
10 "Plaintiffs").

11 This Motion is based upon Plaintiffs' failure to state a cause of action for
12 each of the claims alleged in the complaint. Plaintiffs are unable to allege a cause
13 of action for negligence, negligent misrepresentation, or intentional
14 misrepresentation against the Rating Agencies. Moreover, Plaintiffs fail to allege
15 negligent misrepresentation and fraud with the specificity required pursuant to Rule
16 9(b) of the Federal Rules of Civil Procedure.

17 Plaintiffs' negligence and negligent misrepresentation claims are separately
18 preempted by (i) the Credit Rating Agency Reform Act of 2006 ("CRARA"), 15
19 U.S.C. § 78o-7(c)(1)-(2); and (ii) New York's Martin Act. Plaintiffs' negligence
20 and negligent misrepresentation claims are also barred by fundamental principles of
21 constitutional law.

22 This Motion is based upon this Notice of Motion and Motion, the
23 accompanying Memorandum of Points and Authorities, the Declarations of David
24 T. Biderman and Joshua M. Rubins, the proposed order lodged herewith, the
25 records and pleadings already on file in this matter, and upon such additional
26 matters as may be presented in further briefing or at oral argument hereafter.

This Motion is made following the conferences of counsel pursuant to L.R. 7-3 which took place on June 23, 2010 and May 19, 2010.

Respectfully submitted,

Dated: June 28, 2010

/s/ David T. Biderman

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/s/ Scott D. Cunningham(as authorized on June 28,
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